LIBRARY
SUPREME COURT, U. S.

No. 71-191

Supreme Court, U.S.
FILED
SEP 2 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

JOHN JOSEPH CLUTTERBUCK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-191

JOHN JOSEPH CLUTTERBUCK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial in the United States District Court for the Eastern District of California, petitioner was convicted on four counts charging the theft from an air force base of United States property worth more than $100 in violation of 18 U.S.C. 641. He was sentenced to concurrent prison terms of ten years and fined $10,000 on one count. On appeal, the court of appeals held that there was insufficient evidence to show that the value of the property on any one

count exceeded $100; hence it remanded to the district court for resentencing under the misdemeanor provisions of Section 641. On remand, the district court sentenced petitioner to four consecutive one-year prison terms and fines of $1,000 on each count. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner's claim that his resentence violated the principles of *North Carolina* v. *Pearce*, 395 U.S. 711, is answered in the opinion below (Pet. App. A, 1-3), on which we rely here.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 443243 175